SUPREME COURT OF THE UNITED STATES.

1333.

No. ~~111~~ 68.

WILLIAM C. HOLT AND WIFE, APPELLANTS,

VERSUS

THOMAS AND EDMUND ROGERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

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UNITED STATES OF AMERICA, 7 *Circuit Court, Kentucky District, sct.*

WILLIAM C. HOLT ET UX. *Complainants,* } *In Chancery.*
against
THOMAS AND EDMUND ROGERS, *Defendants.* }

Pleas before the honorable Robert Trimble and John Boyle, judges of the seventh circuit court of the United States of America in and for the district of Kentucky, held at the capitol, in the town of Frankfort, at the May term of said court, in the year of our Lord one thousand eight hundred and twenty-eight.

Be it remembered, that heretofore, to wit, on the 28th day of February, in the year 1823, came the complainants, William C. Holt and wife, by their counsel, into the clerk's office of the court aforesaid, and filed the following bill in chancery against Thomas and Edmund Rogers, to wit:

To the Judges of the court of the United States for the seventh circuit and Kentucky district, in chancery, sitting:

Your complainants, William C. Holt and Ann his wife, (citizens of the State of Virginia,) respectfully state that, on the sixth day of January, 1794, John Rogers, then of the county of Caroline, in the State of Virginia, sold unto James Dickinson, then of the city of Richmond, a certain tract of land lying in the State of Kentucky, on Drake's creek, opposite the first large fork known by the name of the Mountain Island tract, surveyed for twelve hundred acres, (as by said Rogers was represented;) and the better to designate the said tract the said Rogers showed and delivered to said Dickinson a plat and certificate of survey thereof, signed by Edmund Rogers, deputy surveyor; and also now exhibited as part of this bill marked P, of which survey the said Rogers represented himself to be the owner, (and so the plat and certificate of survey purported,) but for which he had not then obtained the grant, but would obtain it in a short time: said Dickinson purchased of said Rogers the said tract of land at the price of one hundred and twenty pounds, Virginia currency, of the value, and equal to four hundred dollars money of the United States, whereof said Dickinson paid the sum of forty-five pounds, and gave his obligation to said Rogers conditioned to pay the residue of said price, (viz. seventy-five pounds,) after said Rogers should make to said Dickinson, in fee simple, a fair and indisputable title to said tract of land; and the said Rogers executed to said Dickinson an obligation to convey the said tract of land in fee simple on request, as by the said obligation exhibited as part of this bill, marked B, more at large appears. That said John Rogers departed this life before he obtained a grant from the commonwealth for said tract of land; that said Dickinson departed this life in the borough of Norfolk, in the State of Virginia, in or about the month of September, in the year, 1806, having first duly published his last will and testament; by which, after some bequests, (by which this tract of land did not pass,) he devised the residue of his estate, real and personal, to his wife Mary, as by a copy of said will, duly proved and admitted to record in the court of the borough of Norfolk, more at large appears. The original will is by the laws of Virginia in the custody of the clerk of said court, there to remain, and therefore the original cannot be produced; which copy herewith exhibited the complainants desire to be taken as a part of this bill. After the probate of said will and testament, the said devisee, Mary, the

widow of said Dickinson, departed this life, leaving your oratrix, Ann, her only child and heiress at law—your oratrix being the daughter and only issue of said Mary, but born of a former marriage; and, at the death of her mother, your oratrix was the wife of her present husband, William C. Holt. By reason of the intestacy of her mother, and her being the only child her mother ever had, your oratrix, Ann, became entitled to the said tract of land so sold by said John Rogers to the said Dickinson Farthermore, your complainants state that said John Rogers, shortly after the said sale to said Dickinson, died intestate, without issue, and unmarried; and, after the death of said John, his father, George Rogers, as heir at law to said John Rogers, claimed and possessed himself of all the estate, real and personal, of said John Rogers, and especially of the said tract of land called the Mountain Island tract, bounded as set forth in said bond, and in said explanation and plat of the survey; and the said George, as heir to said John, obtained a grant from the commonwealth of Kentucky for the said Mountain Island tract of land to himself, as heir aforesaid, for twelve hundred and thirty-six and two-third acres, and to William Marshall for one hundred acres, as by a copy of said grant herewith exhibited bearing date on the seventh day of March, 1799, fully appears. Your complainants are informed and believe, that, altho' the said grant issued for 100 acres to Wm. Marshall, yet it was by some bargain between said Marshall and said John Rogers, the property of said John; and that the said George; as heir to said John, or the representatives of said George since his death, obtained from said Marshall the title to the said one hundred acres, but at what time these respondents are not informed; that said George Rogers, the heir of said John Rogers, departed this life (as they are informed, in the county of Barren or Warren,) in the State of Kentucky, having first duly published his last will and testament, and duly admitted to record, in which he devised the said tract of land (so sold by said John to said Dickinson) called the Mountain Island tract, unto his two sons, Edmund and Thomas Rogers, who are in possession of said land, and have the ability, by virtue of said devise, and ought, by virtue of the said obligation of the said John Rogers aforesaid, to convey to your oratrix Ann. Furthermore, your complainants state that the said Thomas Rogers and Edmund Rogers, the devisees as aforesaid, are also the executors of said last will and testament of said George Rogers, and, as executors, have possessed themselves of the papers of the said George; that the said Edmund and Thomas, or one of them, have in their possession the bond given by said Dickinson to said John Rogers, conditioned to pay the said seventy-five pounds, the balance of the purchase, after the title in fee simple shall be made to said land; in which condition is also recited the said sale by said John to said James Dickinson of the Mountain Island tract, at the price of one hundred and twenty pounds; and the payment of the sum of forty-five pounds is also recited, which bond the said Thomas and Edmund are called upon to exhibit.

Your complainants state, that, said John Rogers having departed this life before he obtained a grant for the said tract of land, the said Dickinson and his wife, and your oratrix and orator, have been prevented by the great distance which they lived from said George, the heir, and from said Edmund and Thomas, the devisees of George, and by the deaths aforesaid, and for want of knowledge of who was the heir or representative of said John, from obtaining a title; for the said Dickinson, at and before his death, resided in Norfolk aforesaid, and so did the said Mary; and your complainants, and

the said George, Thomas and Edmund, all resided in the State of Kentucky. As soon as said Dickinson purchased said tract of land, he sent money by Major Croghan to Kentucky to pay the taxes, as by said Croghan's receipt, herewith exhibited, fully appears, (marked R,) and prayed to be taken as part of this their bill. Your complainants being possessed of the bond of said John Rogers, and of said Croghan's receipt, and desirous of acquiring a conveyance, but not knowing where the heirs or representatives of said John Rogers were to be found, or who they were, wrote to said Croghan, and some time about the year 1819 or 1820 they were referred by said Croghan to said Edmund and George Rogers for information, and forthwith wrote to them on the subject of said obligation, requesting a conveyance, and, in answer, received the letter from said Thomas Rogers, herewith exhibited, dated "Warren County, Kentucky, May 3d, 1820," and prayed to be taken as part of this their bill.

Your complainants, deriving no satisfactory answer, endeavored, through the agency of Doctor Lyddall Wilkinson, of Kentucky, as the attorney of your orator, William, to obtain a conveyance of said land, and caused the bond of said John Rogers to be presented to said Thomas and Edmund, with a view to obtain a conveyance, but could not, after repeated friendly applications to said Thomas and Edmund, get any satisfaction, altho' they well knew the said obligation of said John Rogers to said Dickinson remains unsatisfied and in full force; and altho' they had the said bond from said Dickinson to said John for the balance of the purchase money, to be paid after the title was completed, according to the *sale* and the *price*, and *partial payment* in said condition recited, and the said Edmund and Thomas would offer no other satisfaction to your orators, William's, attorney, but to pay the said sum of forty-five pounds, (so received by said John Rogers,) in paper of Bank of Commonwealth of Kentucky, a medium depreciated and wholly useless to your complainants, altho' they, said Thomas and Edmund, were well apprized, by information which they know to be correct, as well as by the bond in their possession, and the bond produced to them by your complainant's, William's, attorney; that their claim and demand and title under the bond of said John to said Dickinson was regularly derived; and for their refusal to satisfy the said obligation, they, the said Thomas and Edmund, offer no reasonable excuse, but merely that the other children of said George Rogers would be dissatisfied by a compliance with said bond.

But now, so it is, that the said Edmund Rogers and Thomas Rogers, (citizens of the State of Kentucky,) devisees of said George Rogers, heir at law of said John Rogers, who was executor de son tort of John Rogers, deceased, (combining with others unknown, who when, &c.) refuse to convey the said Mountain Island tract of land to your oratrix, or to receive the balance of the purchase money, or give any satisfactory information as to their title thereto, but give out in speeches that they will keep your orator and oratrix out of possession, &c. &c.; all which actings and doings of said Edmund and Thomas are against equity and good conscience, &c.

In tender consideration whereof, and for as much as your complainants are properly to be relieved in this court, where contracts for land fairly made for valuable consideration are specifically enforced, &c. &c.: To the end, therefore, that said Edmund Rogers and Thomas Rogers (citizens of the State of Kentucky) may answer all and singular the premises, according to the rules of this court, and proceedings in chancery, as fully as if the

several matters were repeated by way of interrogatory, especially that they may produce the bond given by said Dickinson to said John Rogers, if they have it, or say what they have done with it; that they may disclose the title of said John Rogers to the said tract of land alluded to in the bond of said John Rogers, the title of said Thomas and Edmund thereto, and, if they have not the title in law or in equity to the 100 acres patented to said Marshall, and how that title was derived; was it derived by them or said George Rogers, under and thro' the said John Rogers? When was the said 100 acres acquired from said Marshall? When was that part of the title forfeited, that they produce a copy of said George Rogers's will and testament? And say, when and where he died? Are they, or either, executors or executor of the last will and testament of said George Rogers, deceased? Had they not, or one of them, the bond of said Dickinson to said John Rogers herein before alluded to? What has become of it? When and where did said John Rogers die? Are they, or one of them, in possession of the tract of land alluded in said John Rogers's bond by the name of the Mountain Island tract? Is not the plat and certificate of survey, herewith exhibited, (marked P,) made by and in the handwriting of him the said Edmund Rogers? Did not the said Edmund make out the said plat and description of said survey for said John Rogers? Did he not send it, or deliver it to said John Rogers? Was not the land described in said plat and certificate called the Mountain Island tract? Has Marshall, the copartner, any interest, equitably, to said one hundred acres? When, and how was said Marshall's interest in said one hundred acres extinguished? If not extinguished, has any division been made, and when and how? What part of said patent, exhibited herein, was held or owned by said George Rogers in his lifetime, and by said devisees since his death? And to the end that the said Edmund and Thomas may be compelled to convey to your oratrix, Ann, the said Mountain Island tract, or so much thereof as the said Edmund and Thomas have the title for, together with an account of the rents issued and profits, your complainants hereby offering to pay the residue of the purchase money for the said tract, and to submit to such decree in relation thereto as this court shall deem equitable; or, if the said Edmund and Thomas have not a fair and regular title for the whole to which your oratrix is entitled, that she may have a decree for so much as they can convey, and compensation for the deficiency, and that possession be delivered to your orator and oratrix; and, to the end that your orator and oratrix may have such other further and general relief as their case shall require and equity shall dictate, hereby offering on their part to do and perform all on their part to be done and performed,—they pray the process of this court against the said Edmund Rogers and Thomas Rogers, (citizens of the State of Kentucky,) directed to the marshal of the Kentucky district, commanding, &c., and as in duty, &c.

BIBB, *for Compl't's.*

The following are the exhibits referred to in the foregoing bill, to wit:

P.

Surveyed for John Rogers 1,200 acres of land on part of a military warrant, No. 769, on Drake's creek. Beginning at a beach standing at themouth of the east fork of said creek, running up the east fork with its meanders S. 58° E. 14 poles, S. 20° E. 10 ps., S. 45° E. 40 ps., S. 85 E. 10 ps., N. 72 E. 33

ps., S. 32 E. 48 ps., S. 10 E. 19 ps., S. 44 E. 12 ps., S. 57, E. 58 ps., E. 31 ps. S. 12 E. 28 ps., S. 45 E. 12 ps., N. 85 E. 22 ps., S. 24 E. 40 ps., S. 70 ps., S. 30 W. 23 ps., S. 60 W. 30 ps., S. 24 ps., S. 85 E. 26 ps., to two white oaks and a beach on the bank of the creek; thence N. 64 E. 236 ps., to a poplar and hickory, N. 22 W. 690, to two popiars, a dogwood and hickory; thence S. 64 W. 320 ps., to a cedar, ash and persimmon, on the bank of the creek, E. 34 ps., S. 37 E. 97 ps., S. 50 ps., S. 38 W. 40 ps., N. 86 W. 182 ps., S. 78 W. 48 ps., S. 50 W. 39 ps., S. 30 W. 106 ps., S. 46 E. 62 ps., N. 80 E. 220 ps., N. 50 E. 60 ps., S. 65 E. 32, to the beginning.

EDMUND ROGERS, *D. S.*

EDWARD SUTTERFIELD, AMOS BOUCHER, MARTIN CARNEY, } *C. C.*

Know all men by these presents, that I, John Rogers, of the county of Caroline, am held and firmly bound unto James Dickinson, of the city of Richmond, in the just and full sum of two thousand pounds, to be paid to the said James Dickinson, his certain attorney, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors or administrators, firmly by these presents. Sealed with my seal, and dated this 6th day of January, 1794.

The condition of the above obligation is such, that, whereas the above bound John Rogers has this day sold unto the said James Dickinson a certain tract or parcel of land lying in the Kentucky State, upon Drake's creek, opposite the first large fork known by the name of the Mountain Island tract, and about ten miles distant from McFaddin's ferry, across Big Barren river, at the mouth of said Drake's creek, containing twelve hundred acres, for the sum of one hundred and twenty pounds Virginia money; now, if the said John Rogers, his heirs or assigns, do, and will truly make, or cause to be made to said Dickinson, or to his assigns, a good and lawful deed for said land when required, then the above obligation to be void, else to remain in full force and virtue.

JOHN ROGERS. [SEAL.]

Witness: THO. G. LANGLEY, WM. DUNCAN.

In the name of God, amen. I, James Dickinson, of the borough of Norfolk, and State of Virginia, being of perfect mind and memory, do make this my last will and testament. My temporal estate, I bequeath and dispose of in the following manner:

Firstly. My will is, that my plantation at Chaucatuck be sold; and that, after all my debts are paid, the residue of the money arising therefrom be appropriated towards building a house on the Town Point lands, which I hold on lease from the corporation of Norfolk borough.

Item. I bequeath to my beloved wife, Mary, during her life, the whole of my aforesaid Town Point lands, with all the buildings thereon, together with all the income and rents thereof, to her own use and disposal until her death; after which, I will that the aforesaid lands and buildings go to John McPhail, in trust: he is to receive the rents, to pay the ground rents to the corporation, and other taxes; after deducting expenses of collection, he is to pay to my wife's daughter, Nancy, two-thirds of the net income which is to be subject to her will; after her death, I will that the other third of the annual income be paid to Mrs. Deborah McDowell during her life.

Item. I give to my wife, Mary, the residue and remainder of all my estate, real and personal; lands, tenements, hereditaments, negroes, goods, chattels, furniture, and rents, with all other property of what kind soever to me appertaining. I give and devise to my aforesaid wife, Mary, whom I do constitute and appoint the whole and sole executrix of this my last will and testament, without requiring security from her; and I do hereby utterly revoke, disallow and disannull, all former bequests, wills and legacies, by me heretofore in any wise left or made, declaring, ratifying, and confirming, this and no other to be my last will and testament.

In witness whereof, I have hereunto set my hand and seal, this eighteenth day of July, in the year of our Lord one thousand eight hundred and six.

JAMES DICKISON. [SEAL.]

Signed, sealed, published and declared, by the within testator to be his last will and testament, in presence of us, who subscribed our names in presence of said testator and each other.

CH'S. ROGERS, GEORGE LEATON, JNO. MCPHAIL.

Norfolk Borough.

At a Husting's court, held the 22d day of September, 1806:

This last will and testament of James Dickison, deceased, was proved by the oaths of Charles Rogers and George Leaton, two of the witnesses thereto, and ordered to be recorded. And, on the motion of Mary Dickison, the executrix therein named, who made oath thereto, and entered into bond in the penalty of five thousand dollars, conditioned as the law directs, certificate is granted her for obtaining probat thereof in due form.

WM. SHARP, *N. C.*
W. SHARP, *C. C.*

A copy.

James Garrard, esq., governor of the commonwealth of Kentucky, to all to whom these presents shall come, greeting. Know ye, that, by virtue and in consideration of a military warrant, No. 836, and part of No. 769, there is granted by the said commonwealth unto George Rogers, heir at law to John Rogers, 1,236⅔ acres, and William Marshall 100 acres, of a certain tract or parcel of land containing thirteen hundred thirty-six and two-third acres, by survey bearing date the 21st day of May, 1792, lying and being in the district set apart for the officers and soldiers of the continental line, on Drake's creek, and bounded as followeth, to wit: Beginning at the mouth of the east fork on the lower side, running up the east fork with its meanders S. 58 E. 14 poles, S. 20 E. 10 poles, S. 45 E. 40 poles, N. 85 E. 10 poles, N. 72 E. 33 poles, S. 32 E. 48 poles, S. 10 E. 19 poles, S. 44 E. 12 poles, S. 57 E. 58 poles, E. 31 poles, S. 12 E. 28 poles, S. 45 E. 12 poles, N. 85 E. 22 poles, S. 24 E. 40 poles, S. 70 poles, S. 30 W. 23 poles, S. 60 W. 30 poles, S. 24 poles, S. 85 E. 26 poles, to two white oaks and a beach, thence N. 64 E. 236 poles, to a poplar and hickory; thence N. 22, W. 666 poles, to two poplars and a dogwood and hickory; thence S. 64 W. 320 poles, to a cedar, ash, and persimmon, on the bank of Drake's creek; thence up the same E. 34 poles, S. 37 E. 97 poles, S. 50 poles, S. 38 W. 40 poles, N. 86 E. 182 poles, S. 78 W. 48 poles, S. 50 W. 30 poles, S. 30 W. 106 poles, S. 46 E. 62 poles, N. 80 E. 220 poles, N. 50 E. 60 poles, S. 65 E. 32 poles, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said George Rogers and William Marshall, and their heirs forever.

In witness whereof, the said James Garrard, esq., governor of the commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed, at Frankfort, on the seventh day of March, in the year of our Lord one thousand seven hundred and ninety-nine, and of the commonwealth the seventh.

JAMES GARRARD.

By the Governor:
HARRY TOULMIN, Sec'y.
A copy, teste:
JNO. M. FOSTER, *R's Office.*
By JOHN L. MOORE, *D. R.*

R.

Richmond, November 15th, 1794. James Dickinson has sent by me to Kentucky, three pounds fifteen shillings and seven and a half for tax and commission, on getting 1,200 acres of land entered with the commissioner of tax, and paying the tax thereon. The land is surveyed in John Rogers's name, on Drake's creek.
W. CROGHAN.

WARREN COUNTY, KENTUCKY,
May 3d, 1820.

SIR: I received, in due time, your letter of the 30th of October last, enclosing to me copies of sundry papers, and requesting information on the subject to which they relate; in answer to which, I must again refer you (as I did in a former letter) to a bond from Mr. Dickinson to my late brother, recorded in the office of the clerk of Henrico county court, Virginia. That paper contains the best and most authentic information I can give you on the subject. I should have answered your letter earlier, but for a lengthy journey from home, and much pressing business since I received. Accept this, if you please, as my apology.

I am, sir, your most obedient servant,
THO. ROGERS.

Mr. WM. C. HOLT, *Norfolk, Virginia.*

On the foregoing bill, the following chancery subpœnas issued, to wit:

The United States of America to the marshal of the Kentucky district, greeting. [L. S.] You are hereby commanded to summon Thomas Rogers and Edmund Rogers, citizens of the State of Kentucky, to appear before the judges of our seventh circuit court of the United States in and for the Kentucky district, at the capitol, in Frankfort, on the first Monday in May next, to answer a bill in chancery exhibited against them by William C. Holt and Ann his wife, citizens of the State of Virginia, and this they shall in no wise omit, under the penalty of four hundred dollars each, and have then there this writ. In testimony whereof, John Marshall, esq., chief justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 1st day of March, 1823, and of our independence the 47th.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return, to wit:

Executed on Edmund Rogers, on the 5th of April, 1823. Thomas Rogers not found.
A. P. COX, *D. M., for*
C. COLEMAN, *M. K. D.*

The United States of America to the marshal of the Kentucky district, greeting. You are hereby commanded to summon Thomas Rogers and Edmund Rogers, citizens of the State of Kentucky, to [L. S.] appear before the judges of seventh circuit court of the United States in and for the Kentucky district, at the capitol, in Frankfort, on the first Monday in November next, to answer a bill in chancery exhibited against them by William C. Holt and Ann his wife, citizens of the State of Virginia; and this they shall in no wise omit, under the penalty of four hundred dollars each, and have then there this writ. In testimony whereof, John Marshall, esq., chief justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 31st day of May, 1823, and of our independence the

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Memo. This subpœna is to be executed on Thomas Rogers only.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return, to wit:
Executed on 12th June, 1823.

A. P. COX, *D. M., for*
C. COLEMAN, *M. K. D.*

And afterwards, to wit: at rules held in the clerk's office of the court aforesaid, in the month of December and year 1823, (until which time this cause was continued on the rule docket:)

Came the defendant, Edmund Rogers, by his counsel, and filed his answer herein to the complainant's bill; which answer is as follows, to wit:

The separate answer of Edmund Rogers to a bill in chancery exhibited against him and Thomas Rogers in the court of the United States for the seventh circuit and Kentucky district, by William C. Holt, and Ann his wife, styling themselves citizens of the State of Virginia.

This respondent now, and at all times saving and reserving to himself all manner of benefit of exceptions to the many errors and misstatements in said bill contained, for answer to so much thereof as he is advised is material for him to answer, says, that he knows nothing of the complainants, or of their residence, or of James Dickinson or his wife Mary, or of the will of said James, nor does he know where these individuals lived and died. This respondent is also ignorant of the contract which John Rogers, in his lifetime, may have made with James Dickinson. This respondent, therefore, requires full proof of the complainants of every allegation in their bill relative to the heirship of the complainants, and their claim under the said Dickinson to the land in the bill mentioned. This respondent also requires full proof of all the allegations of the complainants' bill not hereinafter admitted. This respondent moved from Virginia, east of the Blue Ridge, to Kentucky, in the fall of 1783, and altho' he has been back occasionally to the county of Caroline on a visit, his home and residence have been within the present limits of the State of Kentucky ever since the fall of 1783; consequently this respondent has had no opportunity to be informed on many things spoken of in the complainants' bill: so far as this respondent's knowledge extends, and, so far as his information is such as that he can rely on, he will state what he knows, and admit such things as he believes to be

fact. This respondent has not seen the exhibits of the complainants; he has only seen copies of them; he cannot tell in whose handwriting the exhibit P is in. This respondent thinks it probable that it is in his handwriting, although he has no distinct recollection of ever having made out for his brother, Rogers, a copy of the survey. This respondent, as deputy surveyor for Richard C. Anderson, made the survey for John Rogers and Wm. Marshall of 1336 and $\frac{2}{3}$ acres, called the Mountain Island tract from the circumstance of there being an island in Drake's creek, on the tract; which is so high as never to overflow. The survey was made previous to its being entered for any person whatever, this respondent being in the county at the time of the survey, making surveys on entries which had actually been made by the superintending officers, and making surveys preparatory to entries for such surveys, which was then the custom among the deputies when this respondent made the survey of the Mountain Island tract. He supposed, at a rough calculation, there were about 1,200 acres in it; and, having land warrants to locate for his brother, John Rogers, determined to enter this tract for him, and on the day the survey was made, or the day after, John Rogers came to this respondent in the woods where he was camped, being on his way from Natchez, and stayed one day at this respondent's camp; and this respondent supposes that said John, at that time, got from the complainant the paper exhibited by the complainants, marked P, if it is in this respondent's hand writing, of which this respondent is ignorant. This respondent, on making a more accurate calculation, recollects that he ascertained that the survey would hold out more than 1,200 acres, and on that account put in Marshall's warrant of 100 acres, and made it a joint survey, in proportion to their interests, in the name of Rogers & Marshall, in returning it to the surveyor's office, instead of 1,200 acres. This respondent can account in no other way than the above for the difference between the complainants' exhibit P, and the patent to Rogers & Marshall. This respondent believes John Rogers and George Rogers never had any interest whatever in the 100 acres in the name of said Marshall. This respondent and his co-defendants have no interest in said 100 acres. The land described in the complainants' exhibit P is the same patented to George Rogers and William Marshall. This respondent, from the information he has received, admits that John Rogers did, on the 6th day of January, 1794, execute the bond filed by the complainants; and this respondent charges that James Dickinson executed, on the same day, an obligation to the said Rogers, a copy of which is herewith filed, marked No. 1, as part of this answer—the original being in the possession of this respondent's co-defendant, Thomas, who will in due time file the same, as required by the complainants' bill.

This respondent insists that the obligation from Rogers to Dickinson, and from Dickinson to Rogers, taken together, leaves it entirely optionary with said Rogers whether he would convey the land or not; and, if he did not convey it, he was then bound to pay forty-five pounds. This respondent denies that said Dickinson ever paid or advanced to said Rogers said sum of £45 in payment for said tract of land, or any part thereof, but that, previous to executing said obligations, this respondent thinks it probable that said Rogers owed said Dickinson said sum, and the parties thereupon agreed that if Rogers conveyed the land to Dickinson on or before the 1st of January, 1795, Dickinson should pay an additional sum of £75; and if no such conveyance was made by that time, then Rogers owed the £45 to Dickinson, and was not bound to do any thing more than pay that amount.

This respondent states, that many of the statements of the bill, offered by way of excuse for delay in bringing forward their claim to said tract of land, are not true. This respondent's father, George Rogers, who was heir at law to this respondent's brother, John Rogers, lived in Caroline county, Virginia, about fifty years, at the same place, where he died in 1802, as this respondent is informed and believes: said George's will was admitted to record in the county court of said county of Caroline, and altho' this respondent was appointed one of the executors, yet he never qualified. This respondent's co-defendant, Thomas, was the sole active executor of said will. Said Thomas lived at the place where said George died until the fall of 1811, when he moved to Kentucky. The place where said George and Thomas lived was a place of much notoriety on account of their mills; and the complainants and those under whom they claim, could easily have demanded a conveyance of the title to said tract of land, or demanded the payment of said £45, if they had been entitled to either. Said John Rogers died in 1794 in the city of Richmond. This respondent insists, that, in consequence of the great lapse of time since the contract between John Rogers and said Dickinson was entered into, that it is fairly to be presumed that the business has long since been settled, and that said Dickinson has paid his forty-five pounds. Said John Rogers died in Richmond, Virginia, where said Dickinson lived, according to the statements of the bond or obligation given by him to said Rogers, and this respondent thinks it more than probable that said Dickinson would, in the last illness of said Rogers, (ascertaining, as he could so easily have done, that said Rogers had not obtained a grant for the land,) have made some other arrangement to secure the payment of his forty-five pounds. This respondent, therefore, respectfully requests that the complainants, and all others claiming under said Dickinson, may be forever barred from recovering the said tract of land. This respondent thinks it would be a hard case for those now entitled to the land, which is worth between 2 and $3000 specie, to lose it upon no other ground than the contract attempted to be set up by the complainants, and of which this respondent remained wholly ignorant until after the removal of his co-defendant from Virginia to this State. This respondent, at this time, has no interest in the said tract of land. Some years ago, it was divided, under authority from the Warren county court, among those entitled to it; and your respondent, before he had any knowledge of the existence of the present suit, or any intention on the part of the complainants to institute it, sold his lot or share in said land to the trustees of the Shaker Society. This respondent has paid taxes on the whole of said tract of land from 1792 up to the division thereof, some years ago, by the Warren county court, and has paid on several shares, after the division, up to this time. This respondent never received a cent for rent from any part of said land. He believes his co-defendant has received rent for a small field on the lot which, in the division, was assigned to Susan M. Harris, a grand-daughter of George Rogers; but all that has been so received would not, this respondent thinks, be sufficient to pay the expenses attending the division of the land up to that time, and has hardly paid taxes and other expenses since, on Susan Harris's lot. This respondent, in Frankfort a year or two ago, was introduced to Lyddall Wilkinson, who mentioned the subject of the complainants' claim to this respondent, without exhibiting any bond or other paper that this respondent now recollects. Your respondent told him, said Wilkinson, that your respondent could do nothing in relation

to the business, and knew nothing about it, and referred him to this co-defendant, who was the active executor. This respondent never offered compensation of any kind to said Wilkinson, or any one else, for the complainants. This respondent is willing to pay his part of the £45, and interest thereon, in case the court should be of opinion, under all the circumstances, that it has not been paid. This respondent knows nothing more upon the subject than he has already stated. He cannot, therefore, admit the allegations of the bill not herein particularly answered, but calls on the complainants for full proof of every allegation of their bill not herein expressly admitted. He denies all fraud and combination with which he is charged. He is advised that his co-defendant will exhibit a copy of George Rogers's will.

This respondent having fully answered all within his knowledge, prays to be hence dismissed, with his costs, &c.

EDM'D ROGERS.

STATE OF KENTUCKY, *Barren County, sct.*

This day Edmund Rogers, who signed the within answer, personally appeared before the undersigned, an acting justice of the peace in and for the county aforesaid, and made oath that the statements made on his own knowledge in the foregoing answer are true; and those made on information of others, he believes to be true. Given under my hand, this 19th day of September, 1823.

JOHN GLORE, *J. P. B. C.*

Bond referred to in the foregoing answer, to wit:

Know all men by these presents, that I, James Dickinson, of the city of Richmond, am held and firmly bound unto John Rogers, of Caroline county, in the full and just sum of two hundred and forty pounds, Virginia currency, to which payment well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal, and dated this 6th day of January, 1794.

The condition of the above obligation is such, that whereas the said John Rogers has sold to the said Dickinson a certain parcel or tract of land lying in the State of Kentucky, upon Drake's creek, opposite the first large fork known by the name of the Mountain Island tract, &c. &c., as designated in the bond from the said Rogers to the said Dickinson, containing twelve hundred acres, for the sum of one hundred and twenty pounds, Virginia currency, forty-five pounds of which sum the said Rogers hereby acknowledgeth to have received of said Dickinson. Now, if said Rogers shall, on or before the first day of January, in the year of our Lord 1795, make a fair and indisputable title, in fee simple, to the said Dickinson, his heirs, &c., of the said tract or parcel of land; and the said Dickinson, after that conveyance being made, shall pay to the said Rogers, his certain attorney, his heirs, &c., the further sum of seventy-five pounds like money; but if no such conveyance of said land shall be made, then the said Rogers stands indebted to the said Dickinson in the sum of forty-five pounds already advanced as mentioned as aforesaid, then this obligation to be void, or else to remain in full force and virtue.

JAS. DICKINSON.

Witness: THO. G. LANGLEY, WILLIAM DUNCAN.

A true copy.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of May, and year 1824, (until which time the cause was continued:)

Came the defendant, Thomas Rogers, by his counsel, and filed his answer herein to the complainants' bill; and the complainants, for replication to the answers of the said defendants filed herein, say, that the statements in the said answers contained, so far as they contradict the allegations of their said bill, are untrue; and that the allegations of their bill are true. And a commission is awarded either party to take depositions in this cause.

Answer of Thomas Rogers, to wit:

The separate answer of Thomas Rogers to a bill in chancery, exhibited against him and Edmund Rogers in the court of the United States for the seventh circuit and Kentucky district, by William C. Holt, and Ann his wife, styling themselves citizens of the State of Virginia.

This respondent, now and at all times saving and reserving to himself all manner of benefit of exception to the many errors and misstatements in the said bill contained, for answer to so much thereof as he is advised is material for him to answer, answereth and saith, that he has no knowledge, personally, of the persons or residence of the complainants; that he does not know the complainant, Ann, to be the daughter of Mary Dickinson, widow and devisee of James Dickinson, deceased; and that he is ignorant of the provisions of the last will and testament of the said James, having never seen either said will or a copy thereof. All the information which this respondent has on the above points is derived from the assertions of the complainants, and is too limited for him to admit the allegations of the bill concerning them to be true: he therefore requires of the complainants full proof of every material allegation in their bill, to show that they have a right to the land in the bill mentioned, in virtue of the obligation executed by John Rogers to said James Dickinson, bearing date the 6th day of January, 1794.

This respondent believes, and therefore admits, that said John Rogers executed to said James Dickinson the obligation bearing date the 6th day of January, 1794; but he also believes and states, that, on the same day, the said Dickinson executed and delivered to the said Rogers an obligation in the sum of two hundred and forty pounds Virginia currency, the condition of which obligation was designed, he thinks, by the contracting parties, to operate as a defeasance to the obligation executed and delivered by said John Rogers to said Dickinson, in case the land mentioned in said obligation, executed and delivered to said Dickinson, was not conveyed to him by said Rogers on or before the first day of January, 1795, all which will more fully appear from the said obligation from said Dickinson to said Rogers, bearing date the 6th day of January, 1794, and herewith filed as part of this answer, and made an exhibit in compliance with the call in the bill to that effect; which obligation is marked Z.

The court will perceive that the bond or obligation on John Rogers, exhibited by the complainants, and the obligation on said Dickinson herewith exhibited, bear the same date, were witnessed by the same persons, and were, as this respondent believes and charges, simultaneous acts.

Altho' the complainants have required a production of the bond or obligation given by said Dickinson, and seem to have had a knowledge of its

contents, yet that part of the condition which says: "Now, if the said *Rogers* shall, on or before the first day of January, in the year 1795, make a fair and indisputable title, in fee simple, to the said Dickinson, his heirs, &c., of the said tract or parcel of land; and the said Dickinson, after that conveyance being made, shall pay to the said Rogers, his certain attorney, his heirs, &c., the further sum of seventy-five pounds, like money; *but if no such conveyance of said land shall be made, then the said Rogers stands indebted to the said Dickinson in the sum of forty five pounds, already advanced as mentioned aforesaid,*" has not (in the opinion of this respondent) had with the complainants the effect the contracting parties designed it should have; for, if this respondent gives it the proper construction, the complainants have no equitable ground on which to ask a conveyance of the title to the land, after said 1st day of January, 1795, or at any time before. It seems to this respondent, that it was optionary with said Rogers either to convey or not, as he might choose: if he conveyed on or before the first day of January, 1795, then Dickinson owed him seventy-five pounds; if the conveyance was not made, then Rogers "*stood indebted*" to said Dickinson forty-five pounds. But had Rogers been disposed to make the conveyance, he could not have done it, because he died before he obtained a patent, and before the said 1st day of January, 1795. To show that the construction which this respondent puts upon the clause in the condition of the bond from said Dickinson to Rogers before recited is correct, and that the bonds reciprocally given by the parties, when taken together, were designed, in case the deed for the land was not made, only to have the effect of securing the payment of forty-five pounds before that time due from Rogers to Dickinson, this respondent herewith exhibits an account of said Dickinson against said Rogers for forty-five pounds, with a receipt thereon, found among said Rogers's papers, which account and receipt marked Y, this respondent prays may be taken and considered as part of his answer; and which no doubt are for the forty-five pounds that said Rogers stood indebted to said Dickinson, in case the land was not conveyed on or before the 1st of January, 1795. This respondent admits, that the land described by the plat and certificate of survey exhibited by the complainants, marked P, is the same land designated in the obligation from John Rogers to said James Dickinson, by the name of Mountain Island tract; but how it came to be called 1,200 acres in the plat and certificate exhibited by the complainants, instead of the true quantity, to wit, 1,236⅔ acres, this respondent knows not; neither can this respondent say whether or not the complainants' exhibit P, is in the handwriting of his co-defendant, Edmund Rogers, as he is in possession of a copy only, and does not certainly know that he ever saw the original. This respondent believes, the courses and distances in said exhibit P, correspond substantially, tho' not literally, with the courses and distances in the grant to Rogers and Marshall for the 1,336⅔ acres, nor can he account for the small difference between them.

This respondent conceives that the complainants, in virtue of the bond to said Dickinson, have no pretence to claim more than 1,200 acres of land, if they have a right to any, which is denied. This respondent never heard, (till he saw it stated in a copy of the bill,) nor does he believe, that either John Rogers or George Rogers ever had any title o interest whatever in the 100 acres mentioned in the bill as granted in the name of William Marshall, co-patentee with George Rogers; neither has this respondent (or his co-defendant, Edmund Rogers, as this respondent believes) any interest

whatever in the said 100 acres of land; nor can this respondent tell how it happened that a survey was made for the benefit of Rogers and Marshall in the proportions stated in the patent, instead of making two surveys, thereby separating their interests, except he were to state what he has heard his co-defendant say about it, which, being stated in his answer, it is useless for this respondent to repeat it. After the death of the said John Rogers, in whose name the survey to the extent of 1,236⅔ acres was made, the grant from the commonwealth was obtained in the name of George Rogers, heir at law to John Rogers. The title to said 1,236⅔ acres of land passed from the said George Rogers to this respondent and his co-defendant, Edmund Rogers, by the last will and testament of said George, duly made and published, and recorded in the clerk's office of the county court of Caroline county, in the State of Virginia, where the original, by the laws of Virginia, yet remains, an authentic copy of which, in compliance with the call of the complainants, is herewith exhibited, marked X, and prayed to be taken and considered as part of this answer. From said will, it appears that two sixth parts of said 1,236⅔ acres of land were devised to this respondent and his co-defendant, Edmund Rogers, in fee simple, and the other four-sixths were devised to this respondent and his said co-defendant, in trust, for the use of the testator's four daughters and their children. Frances Underwood, one of said daughters, departed this life in the year 1809, leaving seven children, all of whom were lately, and far as this respondent knows or believes, are still living, and several of them are above the age of twenty-one years. Mildred Harris, another of the daughters of the said George Rogers, died before her father, but after the date of his will, as appears by the codicil to the same, leaving an only child, who is also living, and above the age of twenty-one years.

In the year 1815, the tract of 1,336⅔ acres, granted as aforesaid, in the names of George Rogers and William Marshall, was divided, under the authority of the Warren county court, among those entitled to it; that is to say, said Marshall's part was laid off, and then the residue of the tract was divided into six shares, and one share allotted to each of the devisees or families entitled thereto under the will of said George; all which will more fully appear from the records of the Warren county court, to which the complainants are referred for information. The part or share of said 1,233⅓ acres of land allotted to this respondent contains one hundred and seventy acres, as stated in the report of the commissioners who divided the same, to which report he refers for the boundaries of said 170 acres.

This respondent is informed, and believes, that his co-defendant, Edmund Rogers, sold his lot or share of said land before the complainants commenced this suit. This respondent submits it to the court, whether the interests of his surviving sisters, or the children of those who are dead, can be affected in any manner until they are made parties to the complainants' bill. This respondent will furnish their names if required. A man named Samuel Vantress, as this respondent has understood, has bought Marshall's interest in said tract of 1,336⅔ acres of land, and is now living on or near it—no bargain whatever, as this respondent believes, ever having been made with Marshall for the same by John or George Rogers, as suggested in the complainants' bill.

This respondent states that the complainants, in order to excuse their great laches in bringing forward a claim (doubtful at best) after a lapse of nearly thirty years, have made in their bill palpable misstatements in relation

to the residence and death of George Rogers, and the residence of this respondent.

The statements made in the bill upon these subjects are not true. George Rogers did not depart this life in Barren or Warren county, in the State of Kentucky. Said George Rogers was never a citizen of Kentucky. He died on his own farm in Caroline county, Virginia, on the 13th day of March, 1802, where he had lived, as this respondent is informed and believes, nearly fifty years, and in which county his will has been duly recorded.

The said John Rogers died on the 16th day of April, 1794, at the Eagle tavern, in the city of Richmond, then kept and occupied by the said James Dickinson, as this respondent has understood from various sources, and verily believes: the said John's place of residence, for some time previous to his death, was at his father's, the said George Rogers, in the county of Caroline. This respondent lived with his father, the said George Rogers, at the time of, and for a few years before, said George's death, and continued to live at the same place (which was about fifty miles from Richmond, Dickinson's place of residence,) until the fall of the year 1811, when he moved to Kentucky; remained at his brother's, in Barren county, about two or three months, and then settled in Warren county, within three or four miles of said Mountain Island tract of land. His removal was notorious in the neighborhood in Caroline, which he left; and the complainants could easily have gotten information of the place to which he removed from many persons both in Caroline and Spottsylvania counties, where he was well known, particularly from the persons who purchased his land and mill, and occupied them after his removal.

This respondent's co-defendant, Edmund Rogers, never qualified as an executor of said George Rogers's will, as this respondent believes, altho' he, with this respondent, was appointed an executor. The said Edmund Rogers was a citizen of Kentucky when said George died, and long before, as this respondent understood. Said Dickinson did not die, according to the bill, till 1806: he therefore had about eleven or twelve years, after making his contract with John Rogers, to enforce a compliance with it, previous to his, said Dickinson's, death; and the representatives of said Dickinson, the said Mary, or the complainants, had about five years, after the death of said Dickinson, previous to the respondent's removal from Caroline county, Virginia, to make known their claim to the Mountain Island tract of land, under the bond exhibited by the complainants; during all which time, and until a few years ago, their claim has been dormant. About the year 1819, this respondent received a letter, signed by the name of the complainant, William, to whom this respondent thereafter wrote, referring him to the records of Henrico county court, Virginia, where this respondent, as a precautionary measure, had caused the said defeasance or obligation from said Dickinson to the said John Rogers to be recorded, after the execution thereof was duly proven by the oath of one of the subscribing witnesses thereto, the other being either dead or removed, as this respondent was informed.

The bond under which the complainants claim, shows said John Rogers to have been a resident of Caroline county; and this respondent charges that said Dickinson, his representatives, and all those claiming under him, on application to any intelligent respectable man in said county of Caroline, could have been directed to the place of residence of the said George Rogers in his lifetime; and which, after the death of said George, was the place of residence of this respondent until his removal to Kentucky as afore-

said, and which had acquired more than usual notoriety from the circumstance of the said George Rogers having built and owned a mill for the manufacture of flour, &c. at the falls of one of the branches of Mattapony river, near his residence, and on a public road, often used in travelling between Richmond and Fredericksburg. This respondent avers, therefore, that the excuses made in the bill for so long delay in setting up claims to the said land, are altogether unfounded in fact: wherefore, this respondent prays that, in consequence of the great lapse of time since the execution of the obligation by said John Rogers to said Dickinson, and the delay of the said Dickinson and those claiming under him, to set up claim under the said obligation until this late period, that said Dickinson, and those claiming under him, may be forever barred of all right to recover the land in said obligation mentioned, or any part thereof, and that the bill of the complainants may be dismissed. This respondent thinks that the inference and presumption to be drawn fairly from all the facts is, that said John Rogers and said Dickinson settled the transaction in their life time, probably when said George last visited Richmond, where he died, in April, 1794, at the Eagle tavern, then kept by said Dickinson, who was left in possession of the papers, money, &c., of said Rogers, which he had with him at the time of his death—his death being so sudden that none of his relations from Caroline or elsewhere had an opportunity of seeing him during his illness, which lasted but a very few days, as this respondent was told in Richmond, soon afterwards, by said Dickinson and others, when he arrived there, upon hearing of his death. This respondent's lot or share of said Mountain Island tract of land, to wit, said 170 acres, is wholly unimproved; consequently, he has received no rents from it; and the only advantage he recollects ever having derived from said lot of land, was getting and removing from it to a farm which he has in the Barrens, about 2,400 chesnut fence rails. Since the division, some little rent has been received for a few acres of cleared land upon the lot which fell to Susan M. Harris, niece of this respondent, the whole not exceeding seventy-five or eighty dollars, part of which was paid in depreciated paper of the Bank of the Commonwealth of Kentucky. This amount is probably not more than equal to the many years' taxes paid on the 1,236¾ acres of land: certainly, as this respondent believes, not as much as the taxes and expense of division of the land together would amount to. This respondent, upon all occasions, has referred the complainant, William C. Holt, and his agents, to the records of Henrico county court for the obligation given by said Dickinson to said John Rogers. This paper contains all that this respondent thinks should have been required by the complainants to satisfy them that they had no right to the land. As to Doctor Lyddall Wilkinson's agency for the complainants, this respondent states that he has no recollection of ever having seen said Wilkinson till after the commencement of this suit, perhaps some time in January last. This respondent received a letter, signed by the name of that gentleman, dated "Frankfort, Kentucky, August 26th, 1820," herewith filed, marked W, speaking of 12,000 acres of land instead of 1,200, to which this respondent (believing the 12,000 to be a mistake) wrote, in answer, substantially what is contained in the paper herewith filed, marked V: a gentleman calling himself by the name of Wooldridge handed this respondent the letter herewith filed, marked U, dated "Frankfort, December 17th, 1822, signed L. Wilkinson, attorney in fact for *J. C. Holt* and wife, heirs of J. Dickinson, deceased;" from which it would appear that the said Wilkinson has ei-

ther made another strange mistake, or that the complainants are not the heirs of said Dickinson, as they pretend to be. This respondent has no recollection of having offered forty-five pounds, or any other sum, to said Wilkinson or any one else for the complainants, in paper of the Bank of the Commonwealth of Kentucky. He is willing to pay one-sixth part of said sum of forty-five pounds, in specie, to the legal representatives of said Dickinson, provided the court shall be of opinion that the same has never been paid; but as this respondent is not informed, and personally has no knowledge whether or not said John Rogers paid said forty-five pounds in his lifetime to said Dickinson; whether said Dickinson retained it out of said John Rogers's money, which fell into his hands on said Rogers's death; or whether the same was not paid by George Rogers during the eight years, or nearly eight years, he lived after the said John; and as the contracts between said John Rogers and Dickinson have lain dormant so long, until the witnesses are probably dead or removed, so that this respondent knows not where to find them, and as he settled with the court of Caroline county his account of his executorship of the will of said George Rogers, deceased, before he removed from Virainia, he considers it his duty to reject such stale claims when presented, and to rely on the presumption of law that said John Rogers's bond has been long since settled. He denies that the obligation attempted to be set up and relied on by the complainants, remains in full force so as to bind this respondent in any manner whatever to part with the title to his lot or share in said Mountain Island tract of land. He also denies that he is bound, in conjunction with his co-defendant, Edmund Rogers, as a trustee appointed by the last will and testament of the said George Rogers, to make any title to said complainants for any part of his said tract of land, in consequence of the obligation of said John Rogers to said Dickinson; and this respondent conceives that it would be against conscience and equity to permit the complainants to recover said land, even if they were the representatives of said Dickinson, of which this respondent is ignorant, for so small a consideration as has been heretofore paid, added to that now offered to be paid, the land being now worth, in the estimation of this respondent, at least two thousand dollars.

This respondent having answered all he is advised is material for him to answer unto in the complainants' bill, denies all the allegations thereof not herein expressly admitted or particularly answered, and calls on the complainants for full proof of them. He denies all fraud, combination, &c., and prays that the bill of the complainants may be dismissed, and that he may have his costs, &c.

THO. ROGERS.

STATE OF KENTUCKY, *Warren County, set.*

This day Thomas Rogers personally came before me, the subscriber, a justice of the peace in and for the county aforesaid, and made oath that the statements contained in the foregoing answer, on seven pages, made on his own knowledge, are true; and that those made on the information of others, he believes to be true.

Given under my hand, this 26th day of April, 1824.

JOHN KEEL, *J. P.*

The following are the exhibits referred to in the foregoing answer, to wit:

Z.

Know all men by these presents, that I, James Dickinson, of the city of Richmond, am held and firmly bound unto John Rogers, of Caroline county, in the full and just sum of two hundred and forty pounds Virginia currency, to which payment well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal, and dated this 6th day of January, 1794.

The condition of the above obligation is such, that whereas the said John Rogers has sold to the said Dickinson a certain parcel or tract of land lying in the State of Kentucky, upon Drake's creek, opposite the first large fork, known by the name of the Mountain Island tract, &c., &c., as designated in the bond from the said Rogers to the said Dickinson, containing twelve hundred acres, for the sum of one hundred and twenty pounds Virginia currency, forty-five pounds of which sum the said Rogers hereby acknowledgeth to have received of said Dickinson. Now, if the said Rogers shall, on or before the first day of January, in the year of our Lord 1795, make a fair and indisputable title, in fee simple, to the said Dickinson, his heirs, &c., of the said tract or parcel of land; and the said Dickinson, after that conveyance being made, shall pay to the said Rogers, his certain attorney, his heirs, &c., the further sum of seventy-five pounds like money; but if no such conveyance of said land shall be made, then the said Rogers stands indebted to the said Dickinson in the sum of forty-five pounds already advanced as mentioned aforesaid, then this obligation to be void, or else to remain in full force and virtue.

JAS. DICKINSON. [SEAL.]

THOS. G. LANGLEY, WM. DUNCAN.

At a monthly court held for Henrico county, at the court-house, on Tuesday the fourth day of December, 1810:

This bond was proved by the oath of Thomas G. Langley, a witness thereto, and ordered to be recorded.

Teste: IZARD B. WHITLOCKE, *C. H. C.*

Mr. John Rogers to James Dickinson, Dr.

			£	s	d
Sept. 23,	1793	To amount of old bill,	£7	8	6
Oct. 28,	"	club at dinner, 3s. 6d., toddy, 2s.		5	6
29,	"	wine, 1s., do. do. 2s., feed for two horses, 6s.		9	0
"	"	breakfast and dinner for servant, 3s.; 30, bitters, 6d.		3	6
30,	"	club at dinner, 4s.; 31, sling, 8d, punch, 1s. 6d, toddy, 8d.		6	10
31,	"	supper, &c. 3s. 6d.		3	6
Nov. 1,	"	bitters, 6d., do. 6d., grog 1s., club dinner, 2s. 6d.		3	6
2,	"	bitters, 1s. 6d., club dinner, 3s., grog, 1s; 3, bitters, 2s.		6	6
3,	"	club dinner, 2s. 6d., grog, 1s., club do., punch, 1s. 6d.		5	0
4,	"	punch, 1s. 4d., dinner, 3s. 8d.; 5th, bitters, 1s.		6	0
5,	"	grog, 1s., toddy, 1s., club dinner, 2s. 6d. }		6	0
6,	"	bitters, 1s. 6d. }			
7,	"	club dinner, 3s., porter, 3s., grog, 1s.; 7th, bitters, 2s.		9	0
7,	"	club dinner, 3s., punch, 2s 6d., supper and club, 4s. 6d.		10	0
8,	"	bitters, 1s., club dinner, 3s., grog, 1s. 6d.; 9th, bitters, 1s.		6	6
9,	"	box ticket, 6s, club dinner, 3s., grog, 1s. 6d.		10	6
10,	"	bitters, 1s., club dinner, 3s., grog, 1s.; 11th, bitters, 1s.		6	0
11,	"	club dinner, 3s., punch, 1s. 6d., grog, 1s.		5	6
12,	"	wine, 1s. club dinner, 3s., grog, 1s.		5	0
13,	"	wine, 1s., club dinner, 2s. 6d. sangaree, 2s. 6d., grog, 6d.		6	0
14,	"	club dinner, 2s. 6d., grog, 1s.; 15th, bitters, 1s., club dinner, 2s. 6d.		7	0
15,	"	toddy, 1s. 6d., grog, 1s.; 16th, bitters, 1s., club dinner, 2s. 6d., grog, 1s.		7	0
17,	"	eggnog, 1s. 6d., bitters, 1s. 6d., club dinner, 3s. 9d., grog, 1s.		7	9
18,	"	bitters, 1. 6d., club dinner, 3s., grog, 6d.; 19th, eggnog, 1s. 6d.		6	6
19,	"	club dinner, 2s. 6d., grog, 1s.		3	6
20,	"	eggnog, 1s. 6d., grog, 1s., bitters, 6d., club dinner, 4s.		7	0
"	"	toddy, 1s. 6d., grog, 1s.; 21st, gin, 4d., bitters, 1s., do. 1s. club dinner, 6s.		5	10
22,	"	eggnog, 1s. 6d. grog, 1s., club dinner, 2s. 6d.		5	0

23,	"	grog, 1s., supper and club, 4s.; 24th, toddy, 1s., club, 1s. 6d.		7	6
25,	"	½ pint wine, 1s. 6d , club dinner, 4s. 6d., toddy, 1s., grog, 1s.		8	0
26,	"	sling 6d , club dinner, 2s. 6d., punch, 2s. 6d., bitters, 1s., grog, 6d.		7	0
27,	"	sling, 6d., bitters, 1s., club dinner, 4s. 6d.		6	0
28,	"	bitters, 1s. 6d., club at dinner, 3s. 6d., grog, 1s.		6	0
29,	"	club at dinner, 2s. 6d., grog, 1s. 6d.,		4	0
30,	"	club at dinner, 2s., grog, 1s.		3	0
Dec. 1,	"	bitters, 1s., toddy, 1s., club at dinner, 5s., toddy, 1s.		8	0
2,	"	bitters, 6s., toddy, 1s., club dinner, 2s., glass broke, 1s. 6d., grog, 1s.		6	0
3,	"	bitters, 1s., club dinner, 3s., grog, 1s. 6d.		5	6
4,	"	club at dinner, 3s., grog, 2s.; 5th, toddy, 1s. 3d.		6	3
5,	"	bunch mint, porter, 3s. 6d., club dinner, 3s., grog, 1s.		7	6
6,	"	bitters, 1s., club dinner, 2s., toddy, 1s. 4d.		4	4
7,	"	bitters, 2s., club dinner, 1s. 6d., grog, 1s. 6d.		5	0
8,	"	bitters, 1s., club at dinner, 3s., toddy, 1s., grog, 1s. 6d.		6	6
9,	"	bitters, 1s. 6d., club dinner, 2s. 6d., toddy, 1s., grog, 2s.		7	0
10,	"	bitters, 1s. 6d., club dinner, 3s., toddy, 1s. 3d.		5	9
11,	"	bitters, 6d., club dinner, 2s.; 12th, bitters, 1s. 6d.		4	0
12,	"	club dinner, 2s. 6d., toddy, 1s. grog, 1s.		4	6
13,	"	bitters, 2s., club at dinner, 1s. 6d.		3	6
14,	"	sling, 6d., pint wine, 3s., club do. 3s. 8d., toddy, 1s.		8	2
"	"	53 days' board due to the at 6s.	15	18	0
			37	8	5
		cr. by cash 3 guineas	4	4	0
			33	4	5
15,	"	sling, 1s., club dinner, 2s., toddy, 8d.		3	8
"	"	bitters, 6d., toddy, 8d., do. 1s. 4d., do. 8d., board, 6s.		9	2
16,	"	bitters, 1s. 6d., club dinner, 2s., toddy, 8d,, board, 6s.		10	2
17,	"	bitters, 1s., toddy, 1s. 4d., club dinner, 1s., board, 6s.		9	4

Holt and Wife vs. Rogers. 1853. 41

Y—Continued.

Mr. John Rogers to James Dickinson,

			Dr.
Dec.	18, 1793	To bitters, 6d., toddy, 8d, board, 6s.	7 2
	19, "	bitters, 1s., club dinner, 2s. 6d., board, 6s.	9 6
	20, "	bitters, 1s., club dinner, 2s., board, 6s.	9 0
	21, "	board, 6s.; 22d, bitters, 1s., sangaree, 1s. 6d.	£ 8 6
	22, "	toddy, 8d., board, 6s.; 23d, bitters, 2s.	8 8
	23, "	club at dinner, 4s. 6d., board, 6s.	10 6
	24, "	board 6s.; 25th, bitters, 6d, toddy, 3s. 9d., board, 6s.	16 3
	26, "	bitters, 6d., club dinner, 2s., toddy, 1s. 4d., board, 6s.	10 10
	27, "	bitters, 1s. club at dinner, 2s., toddy, 1s. 4d.	4 4
	" "	board, 6s bitters, billiards, 2s.; 28th, bitters, 6d.	8 6
	28, "	do 6d., club at dinner, 5s. 9d., board, 6s.	12 3
	29, "	bitters, 2s., club at dinner, 1s. 6d., ½ pint wine, 1s. 6d.	5 0
	" "	toddy, 1s. 3d., ½ pint brandy, 1s. 6d., board, 6s.	8 9
	30, "	board, 6s., gin, 6d. wine bitters, 1s., wine, 3s.	10 6
	" "	rub at billiards, 4s. 3d.	4 3
	31, "	board, 6s., gin, 6d., club at dinner, 2s., toddy, 2s, 6d.	11 0
Jan.	1, 1794	board, 6s., gin, 6d., wine, 1s., club at dinner, 2s.	9 6
	" "	arrace punch, 5s.; 2d, board, 6s., bitters, 6d.	11 6
	" "	2d, wine, 1s., club at dinner, 3s., punch, 1s. 6d.	5 6
	" "	arrace punch, 7s 6d.; 3d, board, 6s.	13 6
	3, "	gin, 6d., wine, 6d., toddy, 1s.; 4th, board, 6s.	8 0
	4, "	gin, 6d.; 5th, board, 6s., bitters, 6d.	7 0
			£44 16 09
		To wine, &c.	3 3
			45 00 00

5th January, 1794. Received payment of the above in full.

WILLIAM DUNCAN, for
JAMES DICKINSON.

X.

In the name of God, amen. I, George Rogers, of the county of Caroline, do make this my last will and testament. I give and bequeath to my son Thomas the tract of land whereon I now live, with the appurtenances, together with my one half of the mill thereto adjoining, with the appendages thereto belonging, and all my rights and privileges of, in, and to the said land and mill, with the appurtenances and appendages, to hold the same to him, the said Thomas, and his heirs and assigns forever. The residue of my estate, be it of what nature or kind soever, including my lands on the waters of the Ohio river or elsewhere, I desire may be divided into six lots of equal value: to each of my sons, Edmund and Thomas, I give one of those lots to them respectively, to their respective heirs and assigns forever. The other four lots I am desirous shall be for the use of my four daughters, Ann, Frances, Mary, and Mildred, during life, and, after their death, to go in manner hereinafter directed. I therefore give the said lots to my two sons above named, and to the survivor of them, in trust that they shall sufer and permit my said daughters to hold and possess, each of them, one of the said lots, and to take and receive, each of them, the yearly rents, issues, and profits, of one of the lots during the lifetime of my said daughters respectively: upon the death of my daughters, or either of them, then in trust that they, my said sons, or the survivor, shall convey the lots or lot appropriated to the use of my daughters so dying, to such of the blood relations only of such daughters or daughter as would have been entitled to the same under the act for distribution of intestates' estates, and in such portions as is therein limited and appointed, if such daughters or daughter had been entitled to their respective lots in fee simple, and had died intestate. Notwithstanding any thing herein before set forth, my sons aforesaid, or the survivor, are hereby vested with full power to sell and dispose of any part or either of the four lots last mentioned, and to lay out the money arising from such sales in property more useful and convenient, which shall in every respect be considered as a part of the lot from which it was raised, in the same manner as if no change had taken place; but the principal value of no lot is at any time to be reduced.

Having heretofore made my daughter Frances a deed for three negroes, named Phebe, Brutus and Lydia, with their increase, to her use during life, and then to her descendants; and having also heretofore given to my son Edmund one negro, named Lewey, I desire that my said daughter, Fanny's, lot shall be charged with one hundred and thirty pounds Virginia currency, and my son, Edmund's, lot with ninety pounds like money:—my meaning here is, that, altho' I have herein before said that there shall be six lots of equal value made out of the remaining part of my estate, yet the negroes afore given away shall be considered a part of the estate to be divided into lots, so far as it goes to the said sums of one hundred and thirty and ninety pounds, the value of the said negroes, and that the said Edmund and Frances shall thus account for what they have received over and above what my other children have had of me.

It being possible that my sons may die before the trust herein reposed in them is executed, I therefore desire that each of them may by will appoint a successor; to each of whom, and to the survivor, I give the same powers as is herein given to my sons, or either of them; but no right or power shall accrue to any one so appointed until the death of both my said sons. Should

either of my above named children die before me, it shall not affect any descendant of such child.

I appoint my sons Edmund and Thomas to execute this my last will and testament.

The words "Edmund and Thomas," or lot "and only," in the first page, and the words "as is," in the second page, interlined before signing this my last will and testament.

Witness my hand and seal, this 13th day of September, 1799.

GEORGE ROGERS. [SEAL.]

Published and declared by the testator as and for his last will and testament, in our presence, who witnessed the same in his presence, and at his request.

HENRY F. THORNTON.
WILLIAM POLLARD.
JOSEPH POLLARD, jr.
HUGH ROY.

Before signing the foregoing will, the words "or the survivor" was twice interlined.

GEORGE ROGERS. [SEAL.]

Signed and sealed in our presence:
WILLIAM POLLARD.
HENRY F. THORNTON.
JOSEPH POLLARD, jr.

My daughter, Mildred, having departed this life since my making the foregoing will, that part of my estate designed for her use will of course go to my grand-daughter Susannah Mildred Harris, the only child of my said daughter Mildred; but to prevent, in the event of the death of the said Susannah without issue, I hereby make known and declare, that, in such case, it is my will and desire that the aforementioned part of my estate be equally divided among my other children or their legal representatives, with the like provision as to the parts going to my daughter as is made in respect to them in the body of my will. I desire that this codicil may be taken and considered as a part of my last will and testament. In witness whereof, I have hereunto set my hand, and affixed my seal, this twenty-third day of February, 1802.

GEORGE ROGERS. [SEAL.]

Signed, sealed, published, and declared, by the above named George Rogers, as and for a codicil to his last will and testament, in presence of us.
HUGH ROY.
THO. B. COLEMAN.

At a court held for Caroline county, on the 11th day of May, 1802—

This will, with the codicil annexed, was proved by the oath of Hugh Roy; and, at July court following, the said will was further proved by the oath of Henry F. Thornton, and ordered to be recorded.

Teste: WM. NELSON, *Clerk.*

CAROLINE, *September Court*, 1802.

The codicil hereto annexed was further proved by the oath of Thomas B. Coleman, and ordered to be recorded. On motion of Thomas Rogers, the

executor named in this will, a certificate for obtaining aprobate of the said will was granted him, oath administered, bond acknowledged, and ordered to be recorded.

Teste: WM. NELSON, *Clerk.*
A copy, teste: JOHN L. PENDLETON, *Clerk.*

W.

FRANKORT, KENTUCKY, *August* 26, 1830.

DEAR SIR: I hold a bond given by your late brother, John Rogers, deceased, for 12,000 acres of land, which bond was given to James Dickinson, of which I am informed you have a copy. I am anxious to have the deed made as required by the bond, or to dispose of the land if you wish to purchase. My ardent desire is, that no suit should be brought, as I am opposed to litigation, and indulge the hope that it will be unnecessary. If any difficulties arise as to the conveyance, please to let me know: if none exist, be so good as to inform me when and how I am to get the title without visiting your part of the State. Address me at this place as soon as you can conveniently, and oblige Your's, respectfully,

LYDDALL WILKINSON.

THOMAS ROGERS, Esq.,
Warren County, Kentucky.

V.

HAZLEWOOD, *Warren County, Oct.* 24, 1820.

Doctor LYDDALL WILKINSON, *Frankfort.*

SIR: Your letter of August 26th reached me some time ago. In answer to it I have only to inform you, what has been more than once mentioned in letters to Mr. Holt, (from whom I presume you obtained the bond you speak of,) that I have in my possession a paper from Mr. Dickinson to my late brother, John, which I am advised will operate by way of a defeasance, and show that Mr. Dickinson's representatives are not entitled to the land mentioned in the bond. The paper I allude to is of record in Henrico county court, Virginia; is accessible to all persons concerned; and I should suppose that Mr. Holt has long before this obtained a copy of it; and if he has sold you the bond without apprising you of this circumstance, I do not hesitate to say he has acted improperly.

I am, very respectfully,
Sir, your most obedient servant,

THO. ROGERS.

U.

FRANKFORT, *Dec. 17th,* 1822.

DEAR SIR: As the agent of the heirs of James Dickinson, deceased, I authorize Dr. Thomas M. Wooldridge, the bearer of this, to act for me. Any act of his shall be obligatory on me.

Very respectfully,
I am your's, &c.

L. WILKINSON, *Att'y in fact for*
J. C. HOLT & WIFE,
Heirs of James Dickinson, deceased.

THOMAS ROGERS, Esq.,
Warren County, Kentucky.
per DR. WOOLDRIDGE.

And afterwards, to wit, at the October term of the court aforesaid, in the year 1824—

On motion of the complainants, leave is given them to amend their bill.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of March and year 1826, (until which time this cause was continued)—

Came the complainants, by their counsel, and gave the defendants a rule for hearing herein.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of April and year 1826, (until which time this cause was continued)—

Came the complainants, by their counsel, and set this cause for hearing at the next term of this court.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1826, (until which time this cause was continued)—

Came the complainants, by their counsel, and, for replication say, that the statements made in the defendants' answer, so far as they contradict the allegations in the bill, are untrue, and commission is awarded either party to take depositions; and this cause is remanded to the rules for further proceedings to be had therein, and leave is given the complainant to amend his bill.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of May and year 1828, (until which time this cause was continued)—

Came the complainants, by their counsel, and set this cause for hearing at the next term of this court.

Depositions, to wit:

WILLIAM C. HOLT, AND ANN HIS WIFE, *Plff's,*
against
EDMUND ROGERS AND THOMAS ROGERS, *Deft's.* } *In Chancery.*

The defendants desire to take the depositions of the following named witnesses, to be read as evidence on the trial of this cause, to wit: Robert Pollard and Henry Banks, of the city of Richmond, Virginia; John Farish and Wm. Froggett, of Barren county, Kentucky; and Thomas Hackney and Stephen Hackney, of Logan county, Kentucky. They propose putting to the witnesses the following interrogatories, to wit:

1st. State, if you know, when and where John Rogers, son of George Rogers, died; and whether or not any of his relations attended him in his last illness?

2d. State, if you know, when and where George Rogers died, where he lived previous to his death, and how long he resided at the place he last lived at?

3d. State, if you know, when the defendants, Edmund and Thomas Rogers, or either of them, emigrated to Kentucky, where they lived previous to their settling in Kentucky, and how long they have been citizens of Kentucky?

4th. State whether or not you were acquainted with James Dickinson; and whether or not he kept the Eagle tavern, in the city of Richmond, in Virginia, previous to and during the year 1794?

SHARP, *for deft's.*

UNITED STATES OF AMERICA, *7th Circuit, Kentucky District.*

HOLT, ET UX.
vs.
ROGERS, &c. } *In Chancery.*

Interrogatories to be propounded on the part of the Complainants to the witnesses examined in this cause.

1st. When did James Dickinson depart this life, and where was his residence at the time of his death?

2d. When did Mary, the widow of said Dickinson, depart this life, and where?

3d. Did said Mary, the wife and widow of said James Dickinson, leave any child or children; if so, how many, and their names?

4th. Was said Mary, the wife of said Dickinson, a widow before said Dickinson married her? Had she a child by her first husband? Had she more than one child by her first marriage? Had she any child by her marriage with said Dickinson?

5th. Did Wm. C. Holt marry Ann, the daughter of said Mary, widow of said Dickinson? Was said Ann or not the only child of said Mary, as far as you know, by reputation? State your opportunity of knowing the children of said Mary; whether you were or were not a relation or connexion of the said Mary, or of said Dickinson; and state what you know of the children of said Mary, and of the marriage of said Ann, the daughter of said Mary?

6th. How old was said Ann at the death of her mother, and when did she intermarry with said Holt?

7th. Where was said Mary's residence after the death of her said husband, Dickinson, and where has said Holt and wife resided since their marriage?

8th. Is the receipt now shown and exhibited by the bill as the receipt Mr. Croghan, of the 15th November, 1794, the proper signature of said Croghan, in his own handwriting?

9th. Is said Wm. Croghan dead?

10th. When did said James Dickinson remove from the Eagle tavern, in Richmond, in Virginia, to the borough of Norfolk, of said State?

11th. When did John Rogers die? Was he a housekeeper or a single man, or married? Had he any fixed place of residence between the 6th of January, 1794, and his death?

BIBB, *for compl't.*

In pursuance of the commission hereto attached, we have this day caused Stephen Hackney to appear before us, John Keel and Presley Donaldson, two of the justices of the peace of Warren county, and State of Kentucky, and have this day taken his answers to interrogatories propounded by complainants and defendants, as certified to us by John H. Hanna, C. C. C. K. D.; which interrogatories and answers are to be read as evidence on the trial of a certain of controversy now depending in the seventh circuit court of the United States in and for the Kentucky district, wherein Wm. C Holt and wife are complainants, and Edmund Rogers and Thomas Rogers are defendants. The said Hackney being of lawful age, and first duly sworn on the Holy Evangelist of Almighty God to speak the truth, the whole truth, and nothing but the truth, deposeth and saith, in reply to said interrogatories, as follows, to wit:

1st. Question on the part of the defendants. State, if you know, when and where John Rogers, son of George Rogers, died; and whether any of his relations attended him in his last illness?

Answer. He died in the city of Richmond, Virginia, between the years 1793 and 1795, to the best of my recollection. I cannot state whether any of his relations attended on him in his last illness, nor was I present when he died. I speak of those things from information received about the time of his death, having lived at the time near his father's, George Rogers, of Caroline county, Virginia.

2d Question on the part of the defendants. State, if you know, when and where George Rogers died, where he lived previous to his death, and how long he resided at the place he last lived at?

Answer. He died in Caroline county, Virginia, between 1801 and 1803, but I cannot state the month. He lived at the place where he died, in said county of Caroline, ever since I can remember, and I am now forty-seven years old I used to go to his mill when I was a small boy, not more than eight or nine years old--I have known the family ever since. *He* long said George lived at the place where he died, I cannot tell; I can only say, I never knew of or heard of his residing any where else. I can say he he lived there at least forty years ago.

3d. Question on the part of the defendants State, if you know, when the defendants, Edmund and Thomas Rogers, or either of them, emigrated to Kentucky, where they lived previous to their settling in Kentucky, and how long they have been citizens of Kentucky?

Answer. I cannot say with certainty when Edmund Rogers came or emigrated to Kentucky. He left his father's house, to wit, said George Rogers, when I was a small boy; and it was said in the neighborhood he had gone to Kentucky. I have seen Edmund Rogers more than once in Virginia, after he left his father's for Kentucky, as it was said, and he was received as a visiter from Kentucky. In 1810, I moved from Virginia to the house of Edmund Rogers, in Barren county, Kentucky, and lived with him, or rather on the same farm, three years thereafter. Thomas Rogers lived with his father, said George, previous to his death; and, after said George died, said Thomas continued to live on the same farm until I moved to Kentucky, in 1810, in the fall; and I don't know of his living at any other place of residence in Virginia. In the fall of 1811, said Thomas, with his black family, he being then unmarried, arrived at the house of Edmund Rogers, in Barren county, Kentucky, having emigrated that fall from the place at which he lived when I left Virginia, as I understood; and, ever since 1811, said Thomas has been living and residing in Kentucky.

4th. Question on the part of the defendants. State whether or not you are acquainted with James Dickinson, and whether or not he kept the Eagle tavern, in the city of Richmond, in Virginia, previous to, and during the year 1794?

Answer. I remember I have seen James Dickinson when I was a small boy. I have heard it said he kept the Eagle tavern, in Richmond. He was raised in the neighborhood where I was raised, but he was much older than I was. I never was in Richmond till after 1794, and I can't state, on my own knowledge, when he kept the Eagle tavern, or that he ever kept it farther than as I have heard.

1st. Question on the part of the complainants. When did James Dickinson depart this life, and where was his residence at the time of his death?

Answer. I do not know; the last that I heard on't him, was that he was living in Norfolk, Virginia.

2d Question on the part of the complainants. Where did Mary, the widow of said Dickinson, depart this life, and when?

Answer. When I knew him, he was unmarried; he left the neighborhood when I was quite small, and I don't know who he married. I know nothing about his widow or her death, or that he ever left a widow.

3d. Question on the part of the complainants. Did said Mary, the wife and widow of said James Dickson, leave any child or children; if so, how many, and their names?

Answer. I have no knowledge on the subject of this question.

4th. Question on the part of the complainants. Was said Mary, the wife of said Dickinson, a widow before said Dickinson married her? Had she a child by her first husband? Had she more than one child by her first marriage? Had she any child by her marriage with said Dickinson?

Answer. I know nothing about these things, except that I understood he married a widow; but who she was, or how many children she had, I have no knowledge; and, if I ever heard, have forgotten; and whether he had children by her or not, I don't know.

5th. Question on the part of the complainants. Did William C. Holt marry Ann, the daughter of Mary, widow of said Dickinson? Was said Ann or not the only child of said Mary, as far as you know, by reputation? State your opportunity of knowing the children of said Mary—whether you were or were not a relation or connexion of the said Mary, or of said Dickinson? and state what you know of the children of said Mary, and of the marriage of said Ann, the daughter of said Mary?

Answer. I know nothing of said Holt, said Ann, or said Mary, or her children, or any marriage between said Holt and said Ann. I have had no opportunity to know them. I am not connected or related to them, or either of them, or to said Dickinson, that I know of.

6th. Question on the part of the complainants. How old was said Ann at the death of her mother, and when did she intermarry with said Holt?

Answer. I know nothing about the matter of this question.

7th. Question on the part of the complainants. Where was said Mary's residence after the death of her said husband, Dickinson, and where has said Holt and wife resided since their marriage?

Answer. I know nothing of these matters at all.

8th. Question on the part of the complainants. Is the receipt now shown and exhibited by the bill as the receipt of William Croghan, of the 15th November, 1794, the proper signature of said Croghan, in his own handwriting?

Answer. I know nothing of said receipt, or of the handwriting of said Croghan, or his signature.

9th. Question on the part of the complainants. Is said William Croghan dead?

Answer. I have never understood that Major William Croghan is dead.

10. Question on the part of the complainants. When did said James Dickinson remove from the Eagle tavern in Richmond, in Virginia, to the borough of Norfolk, in said State?

Answer. I don't know; I heard of his living in both places, and that is all I can say about it.

11th. Question on the part of the complainants. When did John Rogers

die? Was he a housekeeper, a single man, or married? Had he any fixed place of residence between the 6th of January, 1794, and his death.

Answer. I have already stated when he died, as nigh as I can recollect the time. He was a single man, and never was married that I ever heard of: he was not a housekeeper. He used to travel about a great deal. He used to make his father's his home, and had no other fixed place of residence that I know of. Where he lived between the 6th day of January, 1794, and the time of his death, I cannot state particularly, except that I saw him at my father's house shortly before I heard of his death; and he was talking then of going to Kentucky shortly thereafter. My father lived then in Spottsylvania county, Virginia, and at this time said John Rogers called his father's, in Caroline county, his home; and further this deponent saith not.

STEPHEN HACKNEY.

The foregoing deposition of Stephen Hackney was taken, sworn to, and subscribed to before us the undersigned, justices of the peace in and for Warren county, Kentucky, in prsuance of the commission hereto attached, on the 7th day of March, 1825. In testimony whereof, we have hereunto subscribed our names.

JOHN KEEL, *J. P. W. C.*
J. DONALDSON, *J. P. W. C.*

In pursuance of the commission hereto attached, we have caused John Farish to come before us, at the office of Franklin. Given, in the town of Glasgow, on the 2d of April, 1825; and have proceeded to take his deposition in answer to interrogatories certified to us by John H. Hanna, clerk; which deposition is to be read as evidence on the trial of a suit now pending in the 7th circuit court of the United States in and for the Kentucky district, wherein William C. Holt and wife are complainants, and Edmund and Thomas Rogers are defendants. The deponent being of lawful age, to wit, 72 years old, and first duly sworn, deposeth and saith, in answer to interrogatories:

Question by defendants. State, if you know, when and where John Rogers, son of George Rogers, died, and whether or not any of his relations attended him in his last illness?

Answer. This deponent always understood that John Rogers, son of George Rogers, died in the city of Richmond, Virginia, and that none of his relations attended him, or were present at his last illness, and that he died about thirty years ago.

Question by same. State, if you know, when and where George Rogers died; where he lived previous to his death, and how long he resided at the place he last lived at?

Answer. He died upwards of twenty years ago, but this deponent cannot state the precise time: he died at his residence in Caroline county, Virginia. He lived, previous to his death, in Caroline county, Virginia, between thirty and forty years.

Question by same. State, if you know, when the defendants, Edmund and Thomas Rogers, or either of them, emigrated to Kentucky; where they lived previous to their settling in Kentucky, and how long they have been citizens of Kentucky?

Answer. Edmund Rogers emigrated to this State about thirty years ago, Thomas about fifteen years ago. They lived at their father's house in Caroline county, Virginia, for a long time: Edmund, until he emigrated to this

State; Thomas removed to Hanover county, Virginia, when a youth, to write in the clerk's office, and lived there about two years, when he returned to his father's, and remained there until he emigrated to this State.

Question by same. State whether or not you were acquainted with James Dickinson, and whether or not he kept the Eagle tavern, in the city of Richmond, Virginia, previous to, and during the year 1794?

Answer. I was not acquainted with James Dickinson, and I do not know who kept the Eagle tavern in the city of Richmond, Virginia, at that time, or previous thereto.

Question by complainant. Is William Croghan dead?

Answer. I have understood that he is; and I know nothing of the matters growing out of the complainants' other questions, except the 11th, and state that John Rogers was no housekeeper, never married, and had no fixed place of residence except his father's, where he stayed but little.

JOHN FARISH.

The deposition of William Froggett, taken at the same time and place, and for the same purpose, in the caption mentioned, said Froggett being of lawful age, to wit, about 67 years old, and first duly sworn, deposeth and saith, in answer to interrogatories, as follows:

Question by defendants. State, if you know, when and where John Rogers, son of George Rogers, died; and whether or not any of his relations attended on him in his last illness.

Answer. He died at the Eagle tavern, in the city of Richmond, Virginia, about thirty years ago; and that none of his relations attended him in his last illness.

Question by same. State, if you know, when and where George Rogers died; where he lived previous to his death, and how long he resided at the place he last lived at?

Answer. George Rogers died in March, 1802, at his residence in Caroline county, Virginia, and had resided there for about 18 years after this deponent became acquainted with him, immediately before his death.

Question by same. State, if you know, when the defendants, Edmund and Thomas Rogers, or either of them, emigrated to Kentucky; where they lived previous to their settling in Kentucky, and how long they have been citizens of Kentucky?

Answer. Edmund Rogers emigrated to Kentucky in the year 1783; he lived, previous to his emigration, at his father's house, in Caroline county, Virginia. Thomas Rogers became a citizen of Kentucky about fifteen years ago; he also lived at his father's house previous to his emigration.

Question by same. State whether or not you were acquainted with James Dickinson; and whether or not he kept the Eagle tavern, in the city of Richmond, Virginia, previous to, and during the year 1794?

Answer. I was acquainted with James Dickinson, and he kept the Eagle tavern, in the city of Richmond, Virginia, previous to, and during the year 1794.

Question by complainant. When did James Dickinson depart this life, and where was his residence at the time of his death?

Answer. I do not know.

Question by same. When did Mary, the widow of said Dickinson, depart this life, and where?

Answer. I do not know.

Question by same. Did said Mary, the wife and widow of said James Dickinson, leave any child or children? If so, how many, and their names?

Answer. I do not know: this deponent was acquainted with none of the family except James Dickinson.

Question by same. Is William Croghan dead?

Answer. I have been informed so by his son.

Question by same. When did said James Dickinson remove from the Eagle tavern, in Richmond, in Virginia, to the borough of Norfolk, of said State?

Answer. I do not know. I understood that he removed to Norfolk.

Question by same. When did John Rogers die? Was he a housekeeper, a single man, or married? Had he any fixed place of residence between the 6th of January, 1794, and his death?

Answer. He died, as stated before, about thirty years ago; he was not a housekeeper; he made his father's house his home; he was not married; and further this deponent saith not. Where he was between the 6th of January, 1794, and his death, this deponent does not know

WILLIAM FROGGETT.

The foregoing depositions were taken, subscribed, and sworn to, before us, two of the justices of the peace for Barren county, at the time and place in the caption mentioned, for the purposes therein stated; and we did read all the questions certified to as to the witnesses for their answers; and they not knowing any thing of many of the subjects spoken of by the complainants in their questions, we have thought it useless to put down such questions as the witnesses could not answer, except to say they were ignorant; and hence we omitted them. We attach hereto a copy of the questions asked.

Given under our hands, this 2d day of April, 1825.

STEPHEN T. LOGAN, *J. P. B. C.*
SAM'L MURRELL, *J. P. B. C.*

The deposition of Robert Pollard, of the city of Richmond, in the State of Virginia, taken on the 14th day of June, 1825, at Merchant's coffee-house, in the said city, in a suit in chancery depending in the seventh circuit court of the United States of America in and for the Kentucky district; wherein William C. Holt, and Ann his wife, are complainants, and Edmund Rogers and Thomas Rogers are defendants. The said Robert Pollard, being first duly sworn on the Holy Evangelists, deposeth as follows, in answer to the four interrogatories hereto annexed.

In answer to the first intsrrogatory, he says: "Major John Rogers, son of George Rogers, late of the county of Caroline, died at the Eagle tavern, in the city of Richmond, after a short and severe illness. I frequently saw him in his illness, and also attended his funeral. I do not recollect that any of his relations were with him during his illness, or at his death, and am fully inclined to the belief they were not: for the impression on my mind is, that Mr. Samuel Clarke, an old acquaintance of his and myself, conducted the funeral. Mr. Clarke is since dead. I have examined a file of newspapers, and also a single paper published by Samuel Pleasants & Co., in Richmond; and observe in the papers, dated on Monday the 21st of April, 1794, Major John Rogers's death is announced as having taken place on the preceding Wednesday, of the correctness of which I have no doubt; but,

from the great lapse of time, I cannot charge my memory as to the particular period."

In answer to the second interrogatory, he says: "Mr. George Rogers, with whom I was acquainted, lived in the county of Caroline, state of Virginia. I have been at his house when he was far advanced in years, and verily believe it was the place of his residence till his death."

In answer to the third interrogatory, he says: "I have been acquainted with Edmund Rogers and Thomas Rogers for many years. The former, I believe, had resided in Kentucky previous to my acquaintance with him. I have understood he went early to that country, and was engaged in surveying military lands in what is called the Green river country. I think it cannot be less than thirty years since my acquaintance commenced. Having understood he had a knowledge of that district of country, I became acquainted with him to obtain information respecting some lands I held there. I have frequently seen him since. Mr. Thomas Rogers left this State for that country many years after. He resided at his father's seat some time after the death of the old gentleman, and many years after I became acquainted with Edmund Rogers, both of them being unmarried when they left Virginia. I have no doubt that was considered as their place of residence when they removed from this State."

In answer to the fourth interrogatory, he says: "I was acquainted with James Dickinson; he kept the Eagle tavern, in the city of Richmond, at the time of Major Rogers's death, but I cannot charge my memory with the particular date that he left it: and further this deponent saith not."

ROBERT POLLARD.

VIRGINIA, *City of Richmond, to wit:*

Robert Pollard personally appeared before me, John L. Newby, a notary public duly qualified for the city of Richmond, and made oath that the facts stated in the foregoing deposition, by him signed, were true.

Given under my hand and seal of office, this the fourteenth day of June,
[L. S.] in the year eighteen hundred and twenty-five.

JOHN L. NEWBY, *Notary.*

VIRGINIA, *to wit:*

I, James Pleasants, governor *of* chief magistrate of the State aforesaid, do hereby certify and make known unto all whom it may concern, that John L. Newby, whose name is subscribed to the annexed deposition, was, at the time of subscribing the same, and now is, a notary public for the city of Richmond, in this State, commissioned and qualified according to law; and that to all his official acts as such, full faith, credit, and authority are had, and ought to be given.

In testimony whereof, I have subscribed my name, and caused the great seal of the State to be affixed hereunto. Done at the city of Rich-
[L. S.] mond the 14th day of June, in the year of our Lord one thousand eight hundred and twenty five, and of the commonwealth the forty-ninth.

JAMES PLEASANTS.

Under a commission issued from the circuit court of the United States of America, in and for the seventh circuit and Kentucky district, in a certain suit in chancery depending in said court, wherein William C. Holt and wife are complainants, and Edmund and Thomas Rogers defendants, and to us directed.

Thomas Y. Bryant, a witness produced, sworn, and examined, in behalf of the complainants, deposeth and saith, in answer to the first interrogatory of the complainants, that, from informatioon received by the deponent in various ways, and which he believes was true, James Dickinson departed this life about the year 1806, in the State of Virginia, where he then resided.

In answer to the second, that Mary, the widow of the said James, departed this life some time prior to the 17th day of May, 1814, in Norfolk, Virginia; but the precise day of her death the deponent cannot say.

In answer to the third, that the said Mary left an only child, a daughter, and her name was Ann S.

In answer to the fourth, that the said Mary was a widow before said Dickinson married her; that her daughter, Ann S., was the only issue by her first husband, so far as the deponent knows or believes; and that there was no issue by or from the marriage of the said Mary with the said Dickinson, so far as he knows or believes.

In answer to the fifth, that William C. Holt married the said Ann S., the only child of the said Mary. The knowledge of the deponent as to the said Mary and Ann S. has been derived from general reputation, and from the fact that the said Mary was an aunt, and the said Ann S. is a cousin of the deponent.

In answer to the sixth, that he cannot say with precision how old the said Ann S. was at the death of her mother, nor at what time she intermarried with the said Holt; but it was some time prior to the death of her mother, the said Mary.

In answer to the seventh, that, from general reputation, the residence of the said Mary after the death of her said husband, Dickinson, was in Norfolk, Virginia, and that the said Holt and wife have resided in the same place since their marriage.

In answer to the eighth, that he knows nothing.

In answer to the ninth, that he does not know the individual alluded to in said interrogatory, and therefore cannot say whether he is dead or not.

In answer to the tenth, that, from general reputation, the said James Dickinson kept the Eagle tavern, in Richmond, Virginia, about the year 1794, and removed from that place to the borough of Norfolk, in the same State; but the deponent cannot say at what time.

To the eleventh, that he knows nothing.

In answer to the first, second, and third interrogatories of the defendants, the deponent knows nothing: and in answer to the fifth, he says that he has already answered it, so far as he knows, by his answer to the tenth interrogatory on the part of the complainants; and further the deponent saith not.

T. Y. BRYANT.

STATE OF KENTUCKY, *Franklin County, sct.*

The execution of the annexed commission appears in the deposition of Thomas Y. Bryant, herewith returned to the court. Given under our hands as justices of the peace for the county aforesaid, at Frankfort, Kentucky, this 20th day of November, 1826.

O. G. WAGGENER,
A. WILSON,
Justices of the Peace for Franklin County.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1828, (until which time this cause was continued)—

Came the parties, by their counsel, and submitted the papers in this cause to the court; and the court took time, &c.

And afterwards, to wit, on a subsequent day of the term and year last aforesaid, to wit, the May term, 1828, on the 30th day of said month:

The court being now sufficiently advised of and concerning the premises, do decree and order that the complainants' bill be dis nissed.

It is therefore decreed and ordered, that the defendants go hence, and recover of the complainants their costs herein by them expended.

UNITED STATES OF AMERICA,
7 Circuit Court, Kentucky District, } *sct.*

I, John H. Hanna, clerk of the seventh circuit court of the United States of America in and for the district of Kentucky, do hereby certify that the foregoing pages contain a full, true, and complete transcript of the record and proceedings in the cause therein mentioned.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this twenty sixth day of April, in the year of our Lord one thousand eight hundred and thirty-one, and in the fifty-fifth year of our independence.

JNO. H. HANNA.

To Edmund Rogers and Thomas Rogers.

Whereas, an appeal has been prayed for by Ann Holt (William C. Holt having departed this life) to the Supreme court of the United States, at the city of Washington, to reverse a decree of the seventh circuit court of the United States of America in and for the district of Kentucky, rendered at the May term, in the year one thousand eight hundred and twenty-eight, wherein William C. Holt and said Ann Holt were complainants, and Edmund Rogers and Thomas Rogers were complainants.

These, therefore, are to cite and command you, that you be and appear in the Supreme Court aforesaid, at the city of Washington, on the second Monday in January next, and then and there to be heard, if any thing you have to say upon the said appeal.

Witness my hand as an associate justice of the Supreme Court of the United States, this 10th day of November, 1831.

JOHN McLEAN.